

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROGER GENE OTTO,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

Case No. C07-5452RJB

REPORT AND
RECOMMENDATION
TO DENY *IN FORMA*
PAUPERIS STATUS

**NOTED FOR:
September 28, 2007**

This habeas corpus action, filed pursuant to 28 U. S.C. 2254, has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636 (b)(1)(B) and Local Magistrates' Rules MJR 3 and MJR 4.

Petitioner filed an application to proceed *in forma pauperis* (Dkt. # 1). Review of the application shows petitioner to be making \$ 135 Dollars a month. He has an average spendable balance of nearly \$40 Dollars a month. Petitioner can afford to pay the \$5 Dollar filing fee.

The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigence. *See* 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an application to proceed in forma pauperis. Weller v. Dickson, 314

1 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963). Plaintiff has not shown that is unable to
2 pay the full filing fee to proceed with his petition. Accordingly the court recommends the *in forma*
3 *pauperis* status be **DENIED and petitioner be given thirty days to pay the filing fee.** Pursuant to
4 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties shall have
5 ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6.
6 Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas
7 v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is
8 directed to set the matter for consideration on **September 28, 2007**, as noted in the caption.

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10 DATED this 4 day of September, 2007.

11 /S/ J. Kelley Arnold
12 J. Kelley Arnold
13 United States Magistrate Judge
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